IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 13TH DECEMBER 2007 / 22ND AGRAHAYANA 1929

CRP.No. 450 of 2004()

OPEA.169/2002 of ADDL.D.C. & ADDL.MACT,ALAPPUZHA.
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REVN. PETITIONER: /IST RESPONDENT:-

POWER GRID CORPORATION OF INDIA LTD.,
LOCAL OFFICE,NANGIARKULANGARA,
KAYAMKULAM,
REP.BY ITS MANAGER.

BY ADV. SRI.K.P.DANDAPANI (SR.)

RESPONDENTS: RESPONDENT/PETITIONER

VASANTHA KUMARI,
RASHMI BHAVANAM,
VALLIKUNNAM MURI,
VALLIKUNNAM VILLAGE.

BY ADV. SRI.PHILIP M.VARUGHESE

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 13/12/2007, CRP. NO.502/2004 AND CONNECTED CASES THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N.KRISHNAN, J

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C.R.P. Nos.450,502,504 & 529/2004
174/2005 & 88 & 613 OF 2007

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Dated this the 13th day of December 2007

O R D E R

C.R.P.No.450 of 2004 is filed against the award of the Addl.District Court, Alappuzha in O.P.(EA)No.169/2002.

2. C.R.P.No.502 of 2004 is preferred against the award of the Addl.District Court, Alappuzha in O.P.(EA)No.112 of 2002 whereby the court has awarded an additional compensation of Rs.34,361/- with 7.5% interest.

3. C.R.P.No.504 of 2004 is preferred against the order of the Addl.District Court, Alappuzha in O.P.(EA)No.110 of 2002 whereby the court below has awarded a compensation of Rs.9,000/- with 7.5% interest.

4. C.R.P.No.529 of 2004 is preferred against the award of the Addl. District Court, Alappuzha in O.P.(EA)No.184 of 2002 whereby the court has awarded an additional compensation of Rs.24,220/- with 7.5% interest.

5. C.R.P.No.174 of 2005 is preferred against the award of the Addl.District Court, Alappuzha in O.P.(EA)No.166 of 2002 whereby the

court has awarded an additional compensation of Rs.32,700/- with 6% interest.

6. C.R.P.No.88 of 2007 is preferred against the award of the Addl.District Court, Alappuzha in O.P.(EA)No.495 of 2002 whereby the court has awarded an additional compensation of Rs.1,69,790/- with 9% interest.

7. C.P.P.No.613 of 2007 is preferred against the award of the Addl.District Court, Alappuzha in O.P.(EA)No.75 of 2002 whereby an amount of Rs.12,980/- with 6% interest has been awarded.

8. The contentions raised in all these revision petitions that the court below has uniformly applied the principle of annuity at 5% basing on the decision of this Court reported in Kumba Amma v. KSEB(2000(1) KLT 542). Learned counsel for the petitioners had drawn by attention to the decision of the Apex Court reported in KSEB v. Livisha(2007(3) 1(SC) and the Apex Court held that each case has to be decided on the facts and circumstances of that case and had given the following guidelines.

> "The situs of the land, the distance between the high voltage electricity line laid thereover, the extent of the line thereon as also the fact as to whether the high voltage line passes over a small track of land or through the middle of the land and other similar relevant factors in our opinion would be

> determinative. The value of the land would also be a relevant factor. The owner of the land furthermore, in a given situation may lose his substantive right to use the property for the purpose for which the same was meant to be used. So far as the compensation in relation to fruit bearing trees are concerned the same would also depend upon the facts and circumstances of each case".

9. So far as O.P.(EA)No.169/2002 is concerned, the amount awarded is only Rs.5,400/-. The court fixed the land value at Rs.6,000/-, considered the diminution of land value for an extent of 3 cents and only adopted 30% for diminution. Even if the matter is to be considered independently it is seen that 3 coconut trees were cut and removed and therefore 3 cents were taken into consideration. It cannot be held to be on the higher side. Similarly relying upon a common award, viz., Ext.A4, the rate per cent was requested to be fixed at Rs.7,859/-. But the court found that it cannot be accepted in toto and therefore only fixed at Rs.6,000/-. So the extent of land taken, the land value fixed and the diminution of land value taken are only reasonable even by taking into consideration the dictum laid down in the decision reported in 2007(3) KLT 1. Therefore the C.R.P. lacks merit and it is dismissed.

10. In O.P.(EA)No.110 of 2002 the court below has awarded Rs.9,000/- as compensation. A perusal of the award would show that there

were trees standing in the property and the court found that long standing trees like jackfruit trees, coconut trees, etc, cannot be planted beneath the power line. The court again considered the land value and instead of fixing it at Rs.7,859/- as shown by Ext.A4 only Rs.6,000/- per cent was taken and calculated the compensation with a diminution of land value at 30%. The court rejected the contention of the petitioner that 9 cents of property has become useless, but relying upon other factors considered that it can be at the most 5 cents and therefore calculated the compensation. Even applying the principles laid down by the Apex Court in 2007(3) KLT 1, one cannot find fault with the court below for arriving at such a decision. Therefore C.R.P. also lacks merit and the same is dismissed.

11.So far as C.R.P.Nos.502 & 529/2004,174/2005 and 88 & 613/2007 are concerned the compensation awarded is higher. The extent involved is larger and therefore it may be necessary in the light of the decision that these are all facts to be taken into consideration while fixing the correct compensation due for the parties. Therefore both documentary and oral evidence may be necessary for a proper disposal of the cases. Therefore the award passed in O.P.(EA)Nos.112,184,166,495 & 75/2002 are set aside and the matters are remitted back to the trial court for fresh disposal by permitting both parties to adduce both documentary and oral evidence in

support of their respective contentions. The court below is directed to dispose of the matters within 3 months from the date of first appearance of the parties. Parties in all the cases are directed to appear before the court below on 23.1.2008.

M.N.KRISHNAN, JUDGE

Cdp/-